

Message Text

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TO USMISSION OECD PARIS PRIORITY

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SUBJECT:COMPATIBILITY OF UN CONVENTION ON A CODE OF
CONDUCT FOR LINER CONFERENCES AND OECD CODE OF LIBERALI-
ZATION

REF: A) OECD PARIS 21884 B) DAF/INV/74.46

1. DEPARTMENT BELIEVES FIRST DRAFT OF DAF/INV/74.46 QUITE
GOOD AND OFFERS FOLLOWING COMMENTS ON SPECIFIC PARAGRAPHS
FOR USE BY MISSION AT ITS DISCRETION BEARING IN MIND WE
WISH TO REFRAIN FROM ANY ACTION WHICH MIGHT DERAIL POSI-
TIVE RESULTS TO DATE.

PARA 50(PAGE 15) IS NOT ENTIRELY CORRECT IN THAT LINER
CONFERENCES' ACTIVITIES IN U.S. FOREIGN TRADE ARE REGU-
LATED BY THE FMC IN ACCORDANCE WITH U.S. MARITIME LAWS.
ADDITION OF PHRASE "EXCEPT WHERE NATIONAL LEGISLATION HAS
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PROVIDED OTHERWISE" WOULD PROVIDE NECESSARY QUALIFICATION.

NOTE HOWEVER THAT PARAS. 39 AND 40 (THIS PARAGRAPH DIFFICULT TO UNDERSTAND) MIGHT THEREBY INDICATE THAT KIND OF "OFFICIAL ACTION" SUGGESTING FMC APPROVAL OF CONFERENCE AGREEMENTS IS INCONSISTENT WITH OECD CODE. THERE IS PROBABLY NO PROBLEM THOUGH BECAUSE IT IS "PASSIVE" GOVERNMENT APPROVAL OF COMMERCIAL DECISIONS, NOT ACTIVE ACTION, I.E. COMMERCIAL FORCES NOT GOVERNMENT ARE AT PLAY; ALSO FMC ACTION REFLECTS CUSTOMARY APPROACH ALL OECD MEMBERS HAVE ALLOWED. SEE PARA. 77 ON THIS, WHICH CONCLUSION WE ARE IN AGREEMENT WITH. ALL THINGS CONSIDERED IT PREFERABLE NOT TO MAKE AN ISSUE ON THIS POINT AS ANNEX III CONTAINS INTER ALIA LISTING OF PERTINENT U.S. LEGISLATION REGULATING CONFERENCE ACTIVITIES.

PARA. 59 (PAGE 17) "IT IS NOT CARRYING" SHOULD BE REWORDED.

PARA. 61 (PAGE 61) "MAY REQUIRE, AND "MAY DEMAND" PERHAPS OVERSTATES THE CASE. ARTICLE 2 (13) OF THE CODE IS AMBIGUOUS IN THAT FIRST IT SPEAKS OF "MAY REQUIRE" (TWICE) IN THE FIRST SENTENCE WHICH HAS A STRONGER CONNOTATION THAN THE WORD "REQUEST" IN THE SECOND SENTENCE. SAME WITH ARTICLE 2 (14). WE SHOULD AT LEAST POINT OUT THAT IN THESE TWO CRITICAL PARAGRAPHS, THERE IS A GREAT LACK OF CLARITY. DEPARTMENT BELIEVES PARA. 61 CORRECTLY INTERPRETS INTENT, BUT WHO KNOWS?---THERE WAS NO LEGISLATIVE HISTORY OR EVEN DISCUSSION ON THESE PARAGRAPHS.

PARA 63 (PAGE 17) IS A VERY GOOD POINT.

PARA 65 (PAGE 18) IS ALL WRONG OR UNCLEARLY WRITTEN. "COMMERCIAL BASIS" MEANS FREIGHT CHARGES MUST BE REASONABLY RELATED TO COSTS AND PROFIT. IT DOES NOT MEAN UNREGULATED. THE PARAGRAPH, HOWEVER, IS SOMEWHAT AMBIGUOUS.

PARA. 70 (PAGE 19) FRANCE MAY DISAGREE WITH LAST SENTENCE. US SHOULD WITHHOLD JUDGMENT ON THIS FOR THE TIME BEING.
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PARA. 73 (PAGE 19) DEPARTMENT NOT SURE ABOUT THIS STATEMENT OR WHERE IT IS GOING. REPORT SHOULD CONCENTRATE ON CODE OF CONDUCT AND IF AT ALL POSSIBLE REFRAIN FROM FOCUSING ON CURRENT "PRIVATE RESTRICTIVE" PRACTICES. THIS PARA FOLLOWS ON PARAS 37 AND 38 WHICH IS HELPFUL.

PARA 76 (PAGE 20) - WE DO NOT AGREE WITH FIRST SENTENCE

OF THIS PARA. MATTER HAS NOT HERETOFORE BEEN
ADDRESSED IN OECD FORUM AND GOOD ARGUMENT CAN BE MADE
THAT PASSIVE ACCEPTANCE BY A GOVERNMENT TO SUCH
PRACTICES IS VIOLATION OF OECD CODE.

2. RE FOOTNOTE (1) ON PAGE 23, MISSION SHOULD REFER
TO WILLIS LETTER OF SEPTEMBER 12, 1974 TO JOHN GERVERS. KISSINGER

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